

## REMARKS/ARGUMENTS

### **I. Status of the Claims**

Claims 1-5 are pending. Claims 6-17 have been withdrawn. Claims 1-5 stand rejected.

### **II. Claim Rejections – 35 U.S.C. § 102**

Claims 1-3 and 5 have been rejected under 35 U.S.C. § 102(b) as being anticipated by O’Riordan et al (EP 583,148 A2) (“O’Riordan”). Applicants respectfully submit that this rejection should be withdrawn.

#### **A. “by natural flow, without a pump”**

O’Riordan does not disclose “collecting a biological fluid *by natural flow, without a pump*.” Instead, O’Riordan unequivocally teaches the use of a peristaltic pump to collect blood (O’Riordan, page 4, lines 56-57 and fig. 4). Therefore, O’Riordan does not teach or suggest “collecting a biological fluid *by natural flow, without a pump*.”

In the “Response to Arguments,” Examiner indicates that “the limitation of collecting a biological fluid by natural flows inherently and necessarily from the teachings of O’Riordan because, when the suction pump is off, fluid can be, and still is, collected from the opened end 12 of suction wand 10, until such time as the wand with end 12 is removed from the patient access point.” Applicants respectfully disagree with this assertion. The pump of O’Riordan pumps the blood bleeding from surgical cavities (O’Riordan, page 3, line 22), not from veins. Thus, the person having ordinary skill in the art would not use the device of O’Riordan to collect biological fluid by natural flow. In fact, without the pump, the blood would not flow into the collection device.

Additionally, since the rejection appears to be at least partially based on teachings not found in O’Riordan, Applicants assert that a rejection under 35 U.S.C. § 102(b) is improper. In the interest of compact prosecution, should Examiner maintain any of the asserted rejections, Applicant respectfully requests appropriate evidentiary support. Additionally, if Examiner is relying upon “common knowledge” or “well known” principles to establish the rejection, Applicant requests that a reference be provided in support of this position pursuant to M.P.E.P. § 2144.03. Furthermore, to the extent that Examiner maintains any rejection based on “Official Notice” or other information within the Examiner’s personal knowledge, Applicant respectfully requests that Examiner cite a reference as documentary evidence in support of this position or provide an affidavit in accordance with M.P.E.P. § 2144.03 and 37 C.F.R. 1.104(d)(2).

**B. “flow rate is adjusted while collecting . . . to preserve a selected ratio”**

O’Riordan does not disclose “the solution *flow rate is adjusted while collecting* the biological fluid based upon the measured fluid flow rate *to preserve a selected ratio* between the collected biological fluid and the anticoagulant and/or preservation solution” Instead, O’Riordan teaches to add the solution after having accumulated a certain amount of biological fluid (O’Riordan, page 3, line 55 “pump 28 is controlled to achieve a predetermined infusion rate,” page 4, line 26 “each occurrence,” page 5, line 23 “very accurate amount of blood being suctioned, and the flow of anticoagulant can be infused in accordance therewith”) *and not to preserve a selected ratio* with respect to a natural flow as claimed in claim 1.

For at least these reasons, Applicants respectfully request the withdrawal of the rejection of claim 1 and corresponding dependent claims 2-5.

### **III. Claim Rejections – 35 U.S.C. § 103**

Claim 4 has been rejected under 35 U.S.C. § 103(a) as being unpatentable over O’Riordan et al (EP 583,148 A2). Applicants respectfully submit that this rejection should be withdrawn. Claim 4 depends from claim 1, which recites “collecting a biological fluid *by natural flow, without a pump*” and “*flow rate is adjusted while collecting . . . to preserve a selected ratio*” As discussed above, O’Riordan does not disclose or teach these, but instead contemplates the use of a pump and a flow rate that is adjusted to achieve a predetermined infusion rate.

For at least these reasons, Applicants respectfully request the withdrawal of the rejection of claim 4.

### **IV. Provisional Rejections – Double Patenting**

Claims 1-5 have been provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 15-21 of copending Application No. 11/196,706. Applicants respectfully submit that this rejection should be withdrawn. Copending Application No. 11/196,706 does not claim “measuring a fluid flow rate.” Instead, the claims Application No. 11/196,706 include “measuring a *volume*” or “calculating a *theoretical volume*.”

For at least these reasons, Applicants respectfully request the withdrawal of the provisional rejection of claims 1-5.

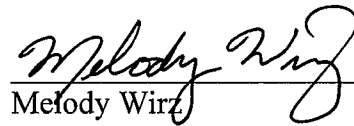
### **V. Conclusion**

In light of the above amendments and remarks, which are supported by the specification, Applicants respectfully request reconsideration and withdrawal of the outstanding rejections. Applicants further submit that the application is now in condition for allowance, and

solicit timely notice of the same. Should the Examiner have any questions, comments, or suggestions in furtherance of the prosecution of this application, the Examiner is invited to contact the attorney of record.

Applicants have submitted payment of \$810.00 herewith for the RCE fee under 37 C.F.R. § 1.117(e). Applicants believe that no additional fees are due. However, should the Commissioner deem that any fees are due, the Commissioner is authorized to debit Baker Botts L.L.P. Deposit Account No. 02-0383, Order Number 062908.0115, for any payment of associated fees, underpayment of fees, or to credit same with any overpayment of fees that may occur in association with this filing.

Respectfully submitted,



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